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International Trade Commission Notice

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80–198)

Cotton Textiles and Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textiles and cotton textile products manufactured or produced in Brazil

There is published below a directive of June 27, 1980, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning visa requirements for cotton textiles and cotton textile products manufactured or produced in Brazil. This directive amends, but does not cancel, that committee's directive of June 29, 1972 (T.D. 72–200).

This directive was published in the Federal Register on July 3, 1980 (45 F.R. 45341), by the committee.

(QUO–2–1)

Dated: July 30, 1980.

WILLIAM D. SLYNE
(For Chester R. Krayton,
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., June 27, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive of June 29, 1972 from the chairman, Committee for the Implementation of Textile Agreements, that directed

you to prohibit, under certain specified conditions, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textiles and cotton textile products, produced or manufactured in the Federative Republic of Brazil, for which that Government had not issued an appropriate export visa.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of April 22, 1976, as amended, between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, the final sentence of the second paragraph of the June 29, 1972 letter is amended to read as follows: "A facsimile of the stamp is enclosed".

The actions taken with respect to the Government of the Federative Republic of Brazil and with respect to imports of cotton textiles and cotton textile products from Brazil have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 80–199)

Wool and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of wool and manmade fiber textile products manufactured or produced in Malaysia

There is published below a directive of July 22, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of wool and manmade fiber textile products in categories 446 and 604 manufactured or produced in Malaysia. This directive amends, but does not cancel, that committee's directive of December 11, 1979 (T.D. 80–52).

This directive was published in the Federal Register on July 23, 1980 (45 F.R. 49122), by the committee.

(QUO–2–1)

Dated: August 1, 1980.

WILLIAM D. SLYNE
(For Chester R. Krayton,
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., July 22, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on December 11, 1979, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in Malaysia.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 8, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 24, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and manmade fiber textile products in categories 446 and 604, produced or manufactured in Malaysia, in excess of the following adjusted levels of restraint:

Category	*Adjusted 12-month level of restraint*
446	15,793 dozen
604	804,878 pounds

The actions taken with respect to the Government of Malaysia and with respect to imports of wool and manmade fiber textile products

from Malaysia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 80–200)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued February 15, 1978, to May 16, 1980, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations

In the synopses below are listed for each drawback rate, approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

Dated: August 1, 1980.

ALFRED G. SCHOLLE,
Director,
Carriers, Drawback and Bonds Division.

(A) Company: Airco, Inc., Airco Carbon Division.
Articles: Graphite electrodes, graphite connecting pins (nipples).
Merchandise: Calcined needle petroleum coke.
Factories: St. Marys, Pa.; Niagara Falls, N.Y.
Statement signed: April 22, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, May 13, 1980.
Revokes: T.D. 80–62–A.

(B) Company: The American Fabrics Co.
Articles: 65 percent polyester, 35 percent cotton schiffli embroidered fabric (white or colored).

Merchandise: 65 percent polyester, 35 percent cotton schiffli embroidered greige fabric.
Factory: Bridgeport, Conn.
Statement signed: September 21, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, May 14, 1980.

(C) Company: Apollo Technologies, Inc.
Articles: Boiler compounds—anticorrosive, inhibitors and additives.
Merchandise: Magnesium oxide.
Factories: Whippany, N.J.; Marshall, Tex.
Statement signed: September 10, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, April 25, 1980.

(D) Company: Big Stone, Inc.
Articles: Canned orange juice and orange juice from concentrate.
Merchandise: Concentrated orange juice for manufacturing.
Factory: Ortonville, Minn.
Statement signed: January 18, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioners of Customs: Houston and Los Angeles, May 13, 1980.

(E) Company: Burlington Industries, Inc.
Articles: Bleached, dyed and/or mercerized piece goods.
Merchandise: Piece goods.
Factories: Cramerton, N.C.; Society Hill, S.C.
Statement signed: January 7, 1980.
Basis of claim: Used in, less valuable waste.
Rate forwarded to Regional Commissioner of Customs: New York, May 8, 1980.

(F) Company: E. I. du Pont de Nemours and Co.
Articles: Hydrogen peroxide, various grades.
Merchandise: 2-amyl-anthraquinone.
Factory: Memphis, Tenn.
Statement signed: April 30, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, May 9, 1980.
Revokes: T.D. 79–78–F.

(G) Company: The Empire Plow Co., Inc.
Articles: Agricultural implement replacement tillage tools and parts.
Merchandise: Hot rolled steel strip, sheet, plate, and bar.
Factory: Cleveland, Ohio.
Statement signed: December 19, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, May 14, 1980.

(H) Company: Evans Cooperage Co., Inc.
Articles: Steel drums.
Merchandise: Rolled black carbon steel sheets.
Factory: Harvey, La.
Statement signed: March 31, 1980.
Basis of claim: Used in less valuable waste.
Rate forwarded to Regional Commissioner of Customs: New Orleans, May 14, 1980.
Revokes: T.D. 77–192–L.

(I) Company: Theresa Friedman & Sons, Inc.
Articles: Preserves and purees.
Merchandise: Extra fine hard refined sugar.
Factory: Philadelphia, Pa.
Statement signed: February 11, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, May 14, 1980.

(J) Company: General Electric Co., Plastics Business Division.
Articles: Polycarbonate resin in powder, pellet, and sheet form.
Merchandise: Bisphenol-A and polycarbonate resin in powder form.
Factory: Mount Vernon, Ind.
Statement signed: April 3, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, May 14, 1980.
Revokes: T.D. 77–76–J.

(K) Company: Georgia-Pacific Corp. (Resin Division).
Articles: Urea-formaldehyde and phenol-formaldehyde resins.
Merchandise: Methanol.
Factories: Various factories as listed in manufacturer's statement.
Statement signed: November 6, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, April 15, 1980.

(L) Company: Grain Terminal Association, Honeymead Products Co. Division.
Articles: Raw linseed oil; linseed meal.
Merchandise: Flaxseed.
Factory: Minneapolis, Minn.
Statement signed: May 6, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, May 14, 1980.

(M) Company: Gulf Oil Corp.
Articles: Barban and Butam, herbicides.
Merchandise: Meta-chloroaniline; butynediol; thionyl chloride.
Factory: Jayhawk Works, South of Pittsburg, Kans.
Statement signed: January 11, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Houston, April 29, 1980.
Revokes: T.D. 77–76–P.

(N) Company: Hardwicke Chemical Co.
Articles: N, N-diethyl-m-toluamide (DEET).
Merchandise: Meta-toluic acid (MTA).
Factory: Elgin, S.C.
Statement signed: February 5, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, May 7, 1980.

(O) Company: Eli Lilly and Co.
Articles: Tylan (tylosin phosphate); tylocine (tylosin); tylosin (tylosin phosphate), and tylosin tartrate.
Merchandise: Betaine anhydrous; tylosin phosphate concentrate.
Factories: Omaha, Nebr.; Clinton, Lafayette, and Indianapolis, Ind.
Statement signed: February 1, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, May 16, 1980.
Revokes: T.D. 79–213–F.

(P) Company: Mack Trucks, Inc.
Articles: Trucks, tractors, truck-tractors, fire apparatus and finished automotive assemblies, subassemblies, components, and parts.
Merchandise: Automotive components, assemblies, subassemblies, and parts.

Factories: Allentown, Macungie, and New Cumberland, Pa.; Hayward, Calif.; Hagerstown, Md.
Statement signed: March 25, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, May 9, 1980.

(Q) Company: Merck & Co., Inc.
Articles: Tetramethyl ammonium hydroxide in methanol solution.
Merchandise: Methyl alcohol reagent.
Factory: Danville, Pa.
Statement signed: April 8, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, April 15, 1980.

(R) Company: Midwesco, Inc. (Perma-Pipe Division)
Articles: Insulated carbon steel pipes, random 40-foot lengths with nominal outside diameters from 3 to 36 inches.
Merchandise: Carbon steel pipe, various outside diameters, random 40-foot lengths, having actual outside diameters of from 3.50 to 36 inches.
Factory: Lebanon, Tenn.
Statement signed: March 26, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New Orleans, April 29, 1980.

(S) Company: Quality Kitchen Foods, Inc.
Articles: Frozen concentrated orange juice.
Merchandise: Concentrated orange juice for manufacturing.
Factory: North Haven, Conn.
Statement signed: March 18, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, May 8, 1980.
Revokes: T.D. 78–397–Y.

(T) Company: Safeway Stores, Inc.
Articles: Still and/or carbonated beverages; preserves; powdered drink mixes; desserts.
Merchandise: Hard refined sugar; liquid refined sugar; liquid invert sugar.
Factories: Various factories as listed in manufacturer's statement.

Statement signed: November 27, 1979.
Basis of claim: Used in.
Rate forward to Regional Commissioner of Customs: San Francisco, April 24, 1980.

(U) Company: Teepak, Inc.
Articles: Finished fibrous artificial sausage casings
Merchandise: Semifinished artificial fibrous sausage casing rollstock.
Factories: Danville, Ill.; Atlanta, Ga.; Bethlehem, Pa.; N. Kansas City, Mo.; La Mirada, Calif.
Statement signed: April 24, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, May 6, 1980.

(V) Company: Teledyne Industries, Inc. Teledyne Firth Sterling Division.
Articles: Blended tungsten grade powder; blended grade tungsten carbide power; tungsten ingots, bars, tablets, rods, wire, granules, rounds, electrodes, extrusions, and various other fabrications; tungsten carbide granules, tool bits, nibs, dies, shapes, forms and extrusions including armament projectiles and cores.
Merchandise: Tungsten concentrates; ferrotungsten and tungsten alloy steel ingots; ammonium paratungstate (APT); tungstic oxide; tungstic acid; tungsten metal powder; tungsten carbide powder (TCP).
Factories: McKeesport, West Elizabeth, and Greensburg, Pa.; Grant and Gurley, Ala.; LaVergne, Tenn.; Houston, Tex.; West Hartford, Conn.; Los Angeles, Calif.
Statement signed: June 1, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, November 29, 1979.
Revokes: T.D. 47949–T, as amended by 50201–E, 51733–I, 52213–H, 53123–D, 53873–P, 69–160–U, and 80–94–T.

(W) Company: Texas Citrus Exchange.
Articles: Frozen concentrated orange juice and orange juice from concentrate.
Merchandise: Concentrated orange juice for manufacturing.
Factories: Mission and Harlingen, Tex.; Ortonville, Minn.; Paw Paw, Mich.
Statement signed: March 11, 1980
Basis of claim: Used in.

Rate forwarded to Regional Commissioners of Customs: Houston and Los Angeles, May 13, 1980.
Revokes: T.D. 78–397–W.

(X) Company: The Top Co.
Articles: Wool tops; Superwash shrink treated wool tops; and wool matchings.
Merchandise: Grease wool.
Factories: South Barre, Mass.; Minneapolis, Minn.
Statement signed: January 13, 1978.
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation.
Rate forwarded to Regional Commissioner of Customs: Boston, February 15, 1978.

(Y) Company: Universal Manufacturing Corp.
Articles: Ballasts and ballast components.
Merchandise: Electrical steel; cold rolled lamination steel: cold rolled carbon steel; and slit steel of the above types.
Factories: Paterson and Totowa, N.J.; Mendenhall and Vicksburg, Miss.; Blytheville, Ark.
Statement signed: February 4, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, May 9, 1980.
Revokes: T.D. 79–213–Y.

(Z) Company: Virginia Chemicals, Inc.
Articles: Sodium Hydrosulfite F.
Merchandise: Sulfur dioxide.
Factories: Portsmouth, Va.; Carlisle, S.C.; Bucks, Ala.; Kalama, Wash.
Statement signed: January 8, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, May 13, 1980.

(T.D. 80–201)

Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of manmade fiber textile products manufactured or produced in Taiwan

There is published below a directive of June 30, 1980, received by the Commissioner of Customs from the acting chairman, Committee

for the Implementation of Textile Agreements, concerning restriction on entry of manmade fiber textile products in certain categories manufactured or produced in Taiwan. This directive amends, but does not cancel, that committee's directive of December 21, 1979 (T.D. 80–66).

This directive was published in the Federal Register on July 3, 1980 (45 F.R. 45340), by the committee.

(QUO–2–1)

Dated: August 1, 1980.

WILLIAM D. SLYNE
(For Chester R. Krayton,
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., June 30, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On December 21, 1979, the chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton, wool, and manmade fiber textile products in certain specified categories, produced or manufactured in Taiwan. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Agreement of June 8, 1978, as amended, concerning cotton, wool and manmade fiber textile products exported from Taiwan; and in accordance with the provisions of Executive Order 11651 of May 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on July 8, 1980, and for the 12-month period beginning on January 1, 1980 and extending through December 31, 1980, to amend the directive of December 21, 1979, to include a level of restraint for category 645/646 and adjusted levels for the category 659 sublimits as follows:

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, concerning cotton, wool, and manmade fiber textile products from Taiwan which provide, in part, that: (1) Within the aggregate and group limits, specific ceilings may be exceeded by designated percentages; (2) these same levels may be increased for carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

324–902 O – 80 – 2

Category		*12-month level of restraint* [2]
645/646	3,785,919	dozen
659 pt.[3]	2,888,500	pounds
659 pt.[4]	1,802,000	pounds of which not more than 238,500 pounds shall be in TSUSA Nos. 380.0429 and 380.8163 and not more than 1,696,000 pounds shall be in TSUSA Nos. 382.0449 and 382.7877.

In carrying out this directive entries of manmade fiber textile products in category 645/646, produced or manufactured in Taiwan, which have been exported to the United States prior to January 1, 1980, shall, to the extent of any unfilled balance, be charged against the level of restraint established for such goods during the 12-month period which began on January 1, 1979, and extended through December 31, 1979. In the event the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

The actions taken with respect to Taiwan and with respect to imports of manmade fiber textile products from Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 80–202)

Cotton, Wool, and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textile products manufactured or produced in Taiwan

There is published below a directive of June 10, 1980, received by the Commissioner of Customs from the chairman, Committee for the

[2] The levels of restraint have not been adjusted to account for any imports after Dec. 31, 1979.
[3] In category 659, only TSUSA Nos. 703.0500 and 703.1000.
[4] In category 659, only TSUSA Nos. 380.0429, 380.8163, 382.0449, and 382.7877.

Implementation of Textile Agreements, concerning restriction on entry of cotton, wool, and manmade fiber textile products in certain categories manufactured or produced in Taiwan. This directive amends, but does not cancel, that committee's directive of December 21, 1979 (T.D. 80–66).

This directive was published in the Federal Register on June 13, 1980 (45 F.R. 40199), by the committee.

(QUO–2–1)

Dated: August 1, 1980.

WILLIAM D. SLYNE
(For Chester R. Krayton,
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., June 10, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of December 21, 1979, from the chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit, effective on January 1, 1980, and for the 12-month period extending through December 31, 1980, entry into the United States for consumption, and withdrawal from warehouse for consumption of cotton, wool, and manmade fiber textile products in certain designated categories.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Agreement of June 8, 1978, as amended, concerning cotton, wool, and manmade fiber textile products exported from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on June 13, 1980, to cancel the import controls established in the directive of December 21, 1979, for categories 313, 342, 363, 442, 444, 469, 631, 643/644, 647, and 659, except for the category 659 sublimits.

The actions taken with respect to Taiwan and with respect to imports of cotton, wool, and manmade fiber textile products from

Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the
Implementation of Textile Agreements.

(T.D. 80–203)

Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of manmade fiber textile products manufactured or produced in Thailand

There is published below a directive of May 6, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of manmade fiber textile products in category 604 manufactured or produced in Thailand. This directive amends, but does not cancel, that committee's directive of December 20, 1979 (T.D. 80–59).

This directive was published in the Federal Register on May 14, 1980 (45 F.R. 31772), by the committee.

(QUO–2–1)

Dated: August 4, 1980.

WILLIAM D. SLYNE
(For Richard R. Rosettie,
Acting Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., May 6, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of December 20, 1979, from the chairman of the

Committee for the Implementation of Textile Agreements which directed you to prohibit entry during the 12-month period which began on January 1, 1980 and extends through December 31, 1980 of cotton and manmade fiber textile products in certain specified categories, produced or manufactured in Thailand, in excess of designated levels of restraint.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on May 14, 1980, and for the 12-month period which began on January 1, 1980, and extends through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of manmade fiber textile products in category 604, produced or manufactured in Thailand, in excess of 487,805 pounds.[1]

Textile products in category 604 which have been exported to the United States prior to January 1, 1980 shall not be subject to this directive.

Textile products in category 604 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The actions taken with respect to the Government of Thailand and with respect to imports of manmade fiber textile products from Thailand have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the
Implementation of Textile Agreements.

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[1] The level of restraint has not been adjusted to account for any imports after Dec. 31, 1979. Imports during the January–February period of 1980 have amounted to 98,840 pounds.

(T.D. 80–204)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued April 3, 1980, to May 23, 1980, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was signed.

(DRA–1–09)

Dated: August 4, 1980.

ALFRED G. SCHOLLE,
Director,
Carriers, Drawback and Bonds Division.

(A) Company: Ambow Corp.
Articles: Cut lace piece goods.
Merchandise: Imported dyed lace piece goods.
Factory: Hoboken, N.J.
Statement signed: March 6, 1980.
Basis of claim: Used in, less valuable waste.
Rate issued by Regional Commissioner of Customs: New York, April 17, 1980.

(B) Company: Applied Research Laboratories Division, Bausch & Lomb.
Articles: Quantometers.
Merchandise: Imported spectrometer kits.
Factory: Sunland, Calif.
Statement signed: March 24, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Los Angeles, April 25, 1980.
Revokes: T.D. 54858–J.

(C) Company: Arapahoe Chemicals, Inc
Articles: 2-d-(6′Methoxy-2′naphthyl)-propionic acid salt of 1-deoxy-1-(octyl amino)-D-glucitol or NOG-1.

Merchandise: Imported N-n-Octylglucamine or 1-Deoxy-1-(n-octy-amino)-D-glucitol or NOG.
Factory: Newport, Tenn.
Statement signed: April 1, 1980.
Basis of claim; Used in.
Rate issued by Regional Commissioner of Customs: Miami, April 10, 1980.

(D) Company: Julius Blum, Inc.
Articles: Assembled furniture fittings.
Merchandise: Imported plastic nylon housings and zinc cam screws.
Factory: Lincoln County (Lowesville), N.C.
Statement signed: March 24, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Miami, April 10, 1980.

(E) Company: Carpenter Technology Corp., Special Products Division.
Articles: Seamless stainless steel cladding tube.
Merchandise: Imported stainless steel bars.
Factory: El Cajon, Calif.
Statement signed: April 16, 1980.
Basis of claim: Used in, less valuable waste.
Rate issued by Regional Commissioner of Customs: Los Angeles, May 2, 1980.

(F) Company: Coleman Engineering, Inc.
Articles: Portable generating and lighting equipment.
Merchandise: Imported diesel engines.
Factory: Memphis, Tenn.
Statement signed: May 15, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New Orleans, May 23, 1980.

(G) Company: DMT Corp.
Articles: Complete generator sets.
Merchandise: Imported diesel internal combustion engine and parts thereof and electric generators.
Factories: New Berlin and Green Bay, Wis.
Statement signed: May 1, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, May 19, 1980.

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(H) Company: Electronic Arrays, Inc.
Articles: Finished semiconductor devices, fully and partially fabricated semiconductor wafers.
Merchandise: Imported unfinished semiconductor subassemblies, 3″ Pl-0-0 and 3″ Nl-1-1 silicon wafers.
Factory: Mountain View, Calif.
Statement signed: June 4, 1979.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, May 23, 1980.
Revokes: T.D. 79–129–G.

(I) Company: Fashionaire, Inc.
Articles: Greige synthetic piece goods.
Merchandise: Imported synthetic yarns such as nylon, rayon and polyester, and blended synthetic yarns.
Factory: Naranjito, Puerto Rico.
Statement signed: January 24, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New York, April 17, 1980.

(J) Company: Fenner America Ltd.
Articles: Conveyor belts.
Merchandise: Imported Sicron 701 emulsion PVC.
Factory: Middletown, Conn.
Statement signed: March 17, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, May 21, 1980.

(K) Company: The Glass-Lined Water Heater Co.
Articles: Kerosene burning water heaters.
Merchandise: Imported water heater storage tanks and control valves.
Factory: Cleveland, Ohio.
Statement signed: April 21, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, May 9, 1980.

(L) Company: Gould-Brown Boveri.
Articles: Circuit breakers and components.
Merchandise: Imported capacitors, resistors, insulators, and fibre glass tubes.
Factory: Downey, Calif.

Statement signed: January 7, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, April 9, 1980.

(M) Company: Grove Manufacturing Co.
Articles: Hydraulic cranes.
Merchandise: Imported Cummins engines V–378, V–504, V–555, VT–225; Deutz engines; Gearmatic 44 winches; Michelin tires G–20X and R–20X; SKF bearings; Mannesman cylinder barrels; and Krueger safe load devices.
Factory: Shady Grove, Pa.
Statement signed: March 14, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, April 3, 1980.
Revokes: T.D. 78–379–K; T.D. 79–125–K; and T.D. 78–379–J as amended by T.D. 79–129–K.

(N) Company: Hartell Division, Milton Roy Co.
Articles: Controlled volume metering pumps.
Merchandise: Imported electric motors and pump parts.
Factory: Ivyland, Pa.
Statement signed: May 14, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, May 23, 1980.

(O) Company: Charles Jacquin et Cie, Inc.
Articles: Bottled Chambord liqueur (less than 100 percent proof).
Merchandise: Imported Chambord liqueur (more than 100 percent proof).
Factory: Philadelphia, Pa.
Statement signed: March 31, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, April 10, 1980.

(P) Company: Kasa Supply Corp.
Articles: Prefinished plywood door stock panels.
Merchandise: Imported hardwood plywood panels.
Factory: Elkhart, Ind.
Statement signed: March 7, 1977.
Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: San Francisco, May 23, 1980.
Revokes: T.D. 76–287–N, to cover successorship from Lam-I-Dor Industries, Inc.

(Q) Company: O'Neill, Inc.
Articles: Wetsuits.
Merchandise: Imported and/or drawback neoprene sponge rubber.
Factory: Santa Cruz, Calif.
Statement signed: March 27, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, April 9, 1980.

(R) Company: Pharmasol Corp.
Articles: Air fresheners.
Merchandise: Imported perfume oil.
Factory: Randolph, Mass.
Statement signed: May 14, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, May 21, 1980.

(S) Company: Power Packaging Corp.
Articles: Dry beverage powdered drink bases.
Merchandise: Drawback refined sugar.
Factory: Placentia, Calif.
Statement signed: February 11, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Los Angeles, April 23, 1980.

(T) Company: Rollscreen Co.
Articles: Vinylwood folding doors and wood folding doors.
Merchandise: Imported white oak polyvinyl chloride with waekener film, Sapeli mahogany veneer and white oak veneer.
Factory: Pella, Iowa.
Statement signed: April 1, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, May 16, 1980.

(U) Company: Rovar Soap Co.
Articles: Toilet soap.
Merchandise: Imported syndet base.

Factory: Hawthorne, Calif.
Statement signed: April 30, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Los Angeles, May 19, 1980.

(V) Company: Rudd Manufacturing Co., Inc.
Articles: Men's and women's trousers and skirts.
Merchandise: Imported woolens, cottons, and silks.
Factory: Queens Village, N.Y.
Statement signed: March 24, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New York, May 13, 1980.

(W) Company: Sandoz, Inc.
Articles: Parlodel tablets.
Merchandise: Imported 2-bromo-alpha-ergokryptin (bromocriptine mesylate).
Factory: East Hanover, N.J.
Statement signed: March 10, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New York, April 30, 1980.

(X) Company: South Florida Diesel Corp.
Articles: Completed diesel engine packages such as marine propulsion engines, industrial power units, generator sets, and vehicle engines.
Merchandise: Imported Perkins base engines, Stamford generators, and Newage marine transmissions.
Factory: Miami, Fla.
Statement signed: April 17, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Miami, April 29, 1980.

(Y) Company: Thomsen Equipment Co.
Articles: Concrete pumps.
Merchandise: Imported Deutz engines.
Factory: Gardena, Calif.
Statement signed: February 25, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Los Angeles, April 25, 1980.

(Z) Company: Wacker Corp.
Articles: Construction equipment and finished parts and assemblies thereof.
Merchandise: Imported internal combustion engines and construction equipment component parts.
Factory: Hartford, Wis.
Statement signed: February 8, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, April 11, 1980.
Revokes: T.D. 79–216–Y.

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4864)

AMERICAN EXPORT LINES, INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 78–1–00174

Ship Repairs

Letters filed by plaintiff, containing a challenge to the liquidation of vessel repair duties, held to be a protest which was timely filed. Consequently, a Customs Service decision, denying the request for remission of duties, held to be the notice of denial of the protest within the pro-

visions of 28 U.S.C. 2631(a), and a summons, filed more than 180 days after that notice of denial, was untimely.

JURISDICTION—FOREIGN REPAIRS TO U.S. VESSEL

Plaintiff, the owner of a vessel documented under the laws of the United States to engage in foreign or coasting trade, seeks review in the Customs Court of the denial of remission of duties assessed on repairs made overseas to its vessel. Section 466, Tariff Act of 1930, as amended.

SECRETARY OF TREASURY—REMISSION OF DUTIES—EVIDENCE OF CASUALTY LOSS

If the owner of a vessel furnishes evidence that the vessel was compelled by stress of weather or casualty to make repairs to secure safety and seaworthiness of the vessel to reach her port of destination, the Secretary of the Treasury may remit or refund repair duties assessed. Section 466(b)(1), Tariff Act of 1930, as amended. *Suwannee Steamship Co.* v. *United States*, 354 F. Supp. 1361, 70 Cust. Ct. 327, C.R.D. 73-3 (1973).

PETITION FOR REMISSION OF DUTY—CUSTOMS REGULATIONS

Under the terms of section 4.14(h) of the Customs Regulations, the Customs officials may liquidate the vessel repair entry without giving notice regarding the application for remission, if plaintiff fails to provide substantiating documents required by the regulation.

JURISDICTION—LIQUIDATION—CHARACTER OF PROTEST

If a letter includes sufficient information to apprise the Customs officials that the plaintiff was challenging the liquidation of vessel repair duties, the letter will be considered as a protest. In Customs jurisprudence, there are no formal rules for the manner in which objections should be expressed.

JURISDICTION—SUMMONS—TIME OF FILING

28 U.S.C. 2631(a) requires a summons to be filed within 180 days from the date of mailing of notice of denial of a protest.

EQUITABLE ESTOPPEL—CUSTOMS CASES

The doctrine of equitable estoppel does not apply to Customs cases if plaintiff has not shown that Customs Service was instrumental in plaintiff's failure to meet statutory or regulatory requirements in the collection or refund of duties on imports. *Air-Sea Brokers, Inc.* v. *United States*, 596 F. 2d 1008, 66 CCPA —, C.A.D. 1222 (1979).

[Judgment for defendant.]

(Decided July 24, 1980)

Haight, Gardner, Poor & Havens (*M. E. DeOrchis, Brian D. Starer* and *Nicholas H. Cobb* on the briefs) for the plaintiff.

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Madeline B. Kuflik* on the briefs), for the defendant.

RE, Chief Judge: In this action, plaintiff sues to recover duties assessed on repairs made overseas to its vessel, the *C.V. Lightning*. On

the ground that plaintiff failed to comply with procedural requirements, the defendant has moved to dismiss the action for lack of jurisdiction.

The repairs, for which plaintiff seeks a remission of duties, arose from an unexpected grounding suffered by the vessel as it was departing New York for Europe. Although the crew was able to release the ship in a matter of seconds, the ship's master nevertheless anchored for damage inspection. After inspection by both the ship's crew and an American Bureau of Shipping engineer, the *C.V. Lightning* was found to be seaworthy, and departed from New York.

After docking at Bremerhaven, West Germany, the vessel underwent another inspection for damage. As a result of this inspection, an American Bureau of Shipping surveyor in Bremerhaven declared the vessel unseaworthy, and required that repairs be made before he would authorize a return voyage.

After the repairs were made, the vessel returned to New York, and pursuant to section 466(a) of the Tariff Act of 1930, as amended, duties were assessed on the cost of the foreign repairs. This statute provides for a duty of 50 per centum to be assessed on the cost of repairs made in a foreign port on a vessel, documented under the laws of the United States, engaged or intended to engage in foreign or coasting trade. Section 466(b)(1) [1] also provides that if the owner of the vessel furnishes good and sufficient evidence that

> such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to * * * make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination,

the Secretary of the Treasury may remit or refund the duties. *See Suwannee Steamship Co.* v. *United States*, 354 F. Supp. 1361, 70 Cust. Ct. 327, C.R.D. 73–3 (1973).

Plaintiff does not dispute the amount of the duties assessed, but contends that the casualty suffered by the *C. V. Lightning*, in running aground, falls within the remission provision of section 466(b)(1). Plaintiff asserts that no duties should have been assessed on the cost of the repairs, or, in any event, the duties exacted should be remitted or refunded.

Defendant denies that the grounding of the *C. V. Lightning* constituted a casualty within the regular course of the voyage. Hence, the defendant contends that plaintiff does not qualify for the remission of duties authorized by section 466(b)(1). Moreover, defendant maintains that, since plaintiff failed to comply with essential proce-

[1] This section was redesignated as sec. 466(d) under a 1978 amendment to the Tariff Act of 1930. Public Law 95–410, sec. 206(2).

dural requirements, it is not entitled to prosecute this action for remission of the foreign repair duties.

Specifically, defendant maintains that plaintiff failed to comply with two procedural requirements: (1) The regulatory mandate under 19 CFR 4.14 for filing log abstracts within 90 days after filing petition for remission of repair duties; and (2) the statutory requirement under 19 U.S.C. 1514 for filing a protest within 90 days after the posting of notice of liquidation.

Plaintiff, on the other hand, contends that (1) the Customs Service failed to comply with its own regulations by not sending plaintiff a denial of its remission petition; and (2) the proper time for initiating a protest for the remission of foreign repair duties is 90 days from denial of the remission petition.

Plaintiff argues that, even if the date of liquidation is held to be the date on which the 90-day period began to run, plaintiff's action was nonetheless filed timely through the letters it sent to Customs within 90 days after liquidation. Plaintiff also maintains that defendant should be estopped from raising any jurisdictional defenses arising from procedural defects, as defendant was instrumental in determining the procedures plaintiff should follow.

The procedure for seeking remission of duties on vessel repairs prior to liquidation is set forth in 19 CFR 4.14 of the Customs Regulations. Section 4.14 requires filing of Customs Form 3415: Declaration of Foreign Repairs to Vessels, upon entry, and filing of an application for remission of duties within 90 days from the date of entry. Evidence of the compelling nature of the repairs, including abstracts of the ship's log, must be filed within 90 days after the filing of the application. The regulation provides for the Customs officials to reach a determination on the application, and to notify the applicant of the determination.

Although various claims have been advanced, the crucial questions presented pertain to the necessary procedures to obtain a remission of duties, and whether the parties have complied with these procedures. It cannot be disputed that confusion existed for both parties as to the proper method to obtain administrative review of the decision to impose assessment of foreign repair duties.

There is a long chronological list of filings and responses between the parties in the attempt to gain remission of duties. After the *C.V. Lightning* returned to New York, plaintiff filed, on June 27, 1974, a vessel repair entry. On July 1, 1974, plaintiff submitted a letter addressed to the U.S. Customs Service at New York requesting that no duties be assessed on the ship's foreign repairs. Certain required documents were submitted with that letter, but no repair cost breakdown or log abstract was submitted at that time. On August 20, 1975,

plaintiff forwarded the final repair cost invoices. However, no log abstracts were ever submitted.

Plaintiff claims that it never received a response from Customs to its request for remission of the repair duties. Defendant maintains that plaintiff was sent a denial, but has not produced a file copy.

The entry was liquidated on October 24, 1975. Shortly after receipt of the bill, i.e., a statement of the amount of liquidated duties, on or about November 5, 1975, plaintiff wrote a letter to the Commissioner of Customs, Washington, D.C., requesting cancellation of the duties. On the following day, a copy of this letter was sent to the Customs officials in New York. Plaintiff attached a cover letter to the November 5 letter, asking that the New York office forward plaintiff's request to the Washington office.

Plaintiff received further bills from Customs for payment of the vessel repair duties, but received no reply to its November letters. On January 7, 1976, plaintiff again wrote to the Customs officials in Washington, D.C., for a response to the November letters. On February 5, 1976, Customs informed plaintiff that the November letters had never been received.

Plaintiff responded by sending another letter to Customs, repeating the information contained in the November 1975 letters, together with a request for the cancellation of the vessel repair duties. Customs denied this request in a letter dated January 14, 1977.

On April 7, 1977, plaintiff's attorneys wrote to Customs, supplying supplemental information on plaintiff's claim, and asked for reasons for the denial. By letter dated July 28, 1977, Customs reaffirmed its prior denial.

Plaintiff filed a formal protest against the Customs decision on September 27, 1977. On October 7, 1977, Customs again denied this protest, and on January 30, 1978, plaintiff filed a summons to commence this civil action. Whether or not this action was commenced within the jurisdictional requisite depends upon the legal effect of the documents filed.

On July 1, 1974, plaintiff filed a remission application but never filed the required log abstracts. Although defendant maintains that the Customs Service notified plaintiff of the denial of the petition, plaintiff contends that it never received the notification, and that Customs liquidated the entry without completing the procedures for the remission petition. Plaintiff submits that, to require it to file a formal protest within 90 days after liquidation, as urged by defendant, would result in plaintiff's initiating a second review procedure while a prior review procedure, i.e., the remission application, was still pending.

According to plaintiff, the proper time for filing a protest is 90 days after the final decision on its application for remission of the duties

rather than 90 days after liquidation. Under this interpretation, plaintiff contends that it would not be required to file a formal protest until after notification of the determination on the remission petition.

In support of its position, plaintiff cites 19 U.S.C. 1514(b)(2)[2] which reads in pertinent part:

> (2) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with such Customs officer within 90 days after but not before—
>
> (A) Notice of liquidation or reliquidation, or
>
> (B) In circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

Plaintiff submits that protests regarding repair remissions are governed by subparagraph (B). Under the circumstances presented, the court does not agree. Subsection (a) of section 1514 requires decisions of the Customs officer to be final and conclusive unless a protest is filed as provided in section 1514. Decisions specifically included are

> the legality of all orders and findings entering into the same, as to * * * (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury, [and] (5) the liquidation or reliquidation of an entry, or any modification thereof.

The provision for repair duty remission petitions under section 4.14 of the Customs Regulations does not create the circumstances in which liquidation is inapplicable, as required by subparagraph (B). The procedures provided for by section 4.14 were all designed to be completed prior to liquidation.

Section 4.14(e) of the regulations explicitly states in part:

> Inasmuch as an unprotested liquidation insofar as it relates to the classification of items under section 466(a) of the Tariff Act of 1930, as amended, is final at the expiration of 90 days, a subsequent application in regard to such classification cannot be considered in the absence of a timely protest.

Moreover, under section 4.14(h), if the applicant fails to file timely the required evidence, Customs may liquidate the entry without notifying the applicant of a determination of its remission petition. Thus, since plaintiff did not file the required log abstracts, two review procedures were not, as plaintiff suggests, pending simultaneously. Rather, by not complying with the regulation in filing the required log abstracts, plaintiff failed to qualify for a determination of its remission petition.

Section 4.14(h) of the Customs Regulations expressly provides that:

> (h) The evidence * * * shall be furnished to the District Director (of Customs) within 90 days after an application is

[2] This section was redesignated 19 U.S.C. 1514(c)(2) as of Jan. 1, 1980, with no change in language.

> filed. *If such evidence is not received within the 90-day period, the entry shall be liquidated without regard to the application* unless the District Director [of Customs] shall have approved an extension of such period. [*added.*]

Thus, since the plaintiff failed to complete its application, and no extension was approved, under the regulation Customs could liquidate the entry "without regard to the application."

The finality of duty assessment, i.e., the liquidation, was designed to eliminate confusion, and guarantee a final reckoning of an importer's liability for a specific entry. Thus, under 19 U.S.C. 1514 all objections to duty assessment must be raised by the filing of a protest within 90 days of liquidation. As previously noted, these include the legality as well as the correctness of a liquidation. *See United States* v. *A. N. Deringer, Inc.*, 593 F. 2d 1015, 66 CCPA —, C.A.D. 1220 (1979).

Plaintiff maintains that it properly commenced its action through the November letters that it mailed to Customs. Within 90 days after liquidation, plaintiff sent Customs two letters relating to the repair duties. It is plaintiff's contention that these letters constituted a valid, timely filed protest of the liquidation.

It is basic to Customs law that protests are not to be strictly construed. Quoting an earlier appellate case, the court in *Norwood Imports* v. *United States*, 48 Cust. Ct. 1, 3, C.D. 2306 (1961), explained:

> The statute requiring a protest on the part of importers was not designed for men learned in the law and trained to the niceties in pleading but for men engaged in commercial pursuits.

Numerous cases addressing the issue of what constitutes a sufficient protest have been reviewed at length in *Mattel, Inc.* v. *United States*, 377 F. Supp. 955, 72 Cust. Ct. 257, C.D. 4547 (1974). In *Mattel*, Judge Maletz described the standards for determining the sufficiency of a protest:

> While no formal rules have been devised for the manner in which such objections should be expressed, the court has held letters to be sufficient as protests where they conveyed to the Customs officials the objection in the mind of the protesting party so that the former would have an opportunity to review their decision and take action accordingly. *Id.* at 260.
>
> In short, the court, taking a liberal posture, has held that, however cryptic, inartistic, or poorly drawn a communication may be, it is sufficient as a protest for purposes of section 514 *if it conveys enough information to appraise knowledgeable officials of the importer's intent and the relief sought. Id.* at 262. [Italic added.]

See also *B. F. Pantoja* v. *United States*, 83 Cust. Ct. 170, C.R.D. 79–17 (1979), and *Labay International, Inc.* v. *United States*, 83 Cust. Ct. 152, C.D. 4834 (1979).

Although the November 5, 1975, letter may have omitted some of the niceties of a formal protest, it nonetheless conveyed sufficient information to apprise the Customs officials that the plaintiff was protesting the liquidation on October 24, 1975, of the vessel repair duties. The letter dated November 5, 1975, and sent to the Commissioner of Customs, made clear the plaintiff's objection in the following language:

> The purpose of this letter is to ask that *consideration be given toward the cancellation of the above mentioned duties* in view of the fact that the vessel would not be allowed to return to the United States unless repairs were carried out overseas. [Italic added.]

The letters in issue have been carefully examined to determine their meaning and effect. From the language used, there is no question that the plaintiff objected to the assessment of the repair duties. Judicial decisions teach that there are no formal rules for the manner in which objections should be expressed in a protest. *United States* v. *Sheldon & Co.*, *5* Ct. Cust. Appls. 427, 429, T.D. 34946 (1914), a germinal case, states the applicable principle of Customs law that:

> * * * a protest * * * must show fairly that the objection afterwards made at the trial was in the mind of the party at the time the protest was made and was brought to the knowledge of the collector to the end that he might ascertain the precise facts and have an opportunity to correct the mistake and cure the defect if it was one that could be obviated.

Plaintiff received repeated requests from Customs for payment of the repair duties but received no response to its letters. Finally, after much correspondence between the plaintiff and the Customs Service, and a repetition of plaintiff's objection, the plaintiff was notified on January 14, 1977, that its request for cancellation of duties had been denied. The Customs Service, in rendering a full administrative review, included an explanation of that negative decision, and stated that the casualty loss that gave rise to the repairs "took place before the voyage commenced." *See Suwannee Steamship Co.* v. *United States*, 435 F. Supp. 389, 390, 79 Cust. Ct. 19, 21, C.D. 4708 (1977).

The November 5, 1975, letter, which was a valid protest timely filed against the liquidation of October 24, 1975, was followed by the Customs Service's decision of January 14, 1977, denying the remission of the repair duties. This denial must be regarded as the notice of denial of that protest within the scope of 28 U.S.C. 2631(a). The letter of denial, dated January 14, 1977, admittedly received by the plaintiff, commenced the running of the 180-day statutory limit for the filing of a summons. The letter of Customs dated July 28, 1977, merely reaffirmed its prior denial and did not cause the 180-day statutory period to commence again.

As January 30, 1978, the date plaintiff filed its summons, is more

than 180 days after the date of the mailing of the Customs Service letter of January 14, 1977, this action must be dismissed because of untimeliness.

Plaintiff also maintains that the defendant should be estopped from asserting a timeliness defense. Plaintiff, however, has not shown that Customs was instrumental in plaintiff's failure to meet either the statutory or regulatory requirement. Plaintiff has presented no evidence that Customs refused tender of either the log abstracts or a sufficient protest.

It is clear that Customs, as well as plaintiff, is bound by the pertinent statute, and may not waive jurisdictional defects. Moreover, as recently noted by Judge Miller, writing for the Court of Customs and Patent Appeals:

> (E)quitable estoppel, even if available in cases involving the Government in its proprietary capacity, is not available against the Government in cases involving the collection or refund of duties on imports. *Air-Sea Brokers, Inc.* v. *United States*, 596 F. 2d 1008, 1011, 66 CCPA —, C.A.D. 1222 (1979).

Since the summons to contest the denial of the protest was not timely filed, the defendant's motion to dismiss is granted.

Judgment will be entered accordingly.

(C.D. 4865)

ELBE PRODUCTS CORP., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 78–1–00124

Imitation leather

I. By the provisions of headnote 1(vii) to part 4, subpart C of schedule 3, TSUS, the imported merchandise, consisting of a nonwoven fiber substrate and plastic coatings of polyurethane and polyvinyl chloride, used as shoe linings, is specially provided for in schedule 7 or elsewhere and, accordingly, excluded from classification under part 4, subpart C of schedule 3, TSUS.

II. The visual and tactile qualities of the plastic coatings which impart to the subject merchandise its ability to serve as imitation leather causes said merchandise to be almost wholly of * * * plastic within the meaning of the superior heading to item 771.42, TSUS, and, accordingly, properly classified under said item of the Tariff Schedules of the United States.

[Judgment for plaintiff.]

(Decided July 25, 1980)

Mandel & Grunfeld (*Steven P. Florsheim* at the trial and on the briefs; *Robert B. Silverman* on the briefs) for the plaintiff.

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*John J. Mahon* at the trial and on the brief), for the defendant.

BOE, Judge: The subject merchandise in the above-entitled action, described in the commercial invoices included in the official entry papers as "Forrita 80" and "Plantilla 80," was exported from Spain and entered at the port of New York in November 1976.

The articles in question were classified under item 355.25, TSUS, as modified by Presidential Proclamation 3822, 82 Stat. 1455, T.D. 68–9, providing:

	Webs, wadding, batting, and nonwoven fabrics, including felts and bonded fabrics, and articles not specially provided for of any one or combination of these products, all the foregoing, of textile materials, whether or not coated or filled:	
	* * * * * * *	
355.25	Of manmade fibers	12¢ per lb. + 15% ad val.

The defendant alternatively asserts that the merchandise in question is properly classified under item 359.50, TSUS, providing:

	Textile fabrics, including laminated fabrics, not specially provided for:	
	* * * * * * *	
359.50	Of manmade fibers	25¢ per lb. + 30% ad val.

In its presentation to this court the plaintiff urges as its primary claim that the subject merchandise be classified under item 771.42, TSUS, providing:

	Film, strips, sheets, plates, slabs, blocks, filaments, rods, seamless tubing, and other profile shapes, all the foregoing wholly or almost wholly of rubber or plastics:	
	Of cellulosic plastics materials:	
	* * * * * * *	
	Not of cellulosic plastics materials:	
	Film, strips, and sheets, all the foregoing which are flexible:	
* * *	Made in imitation of patent leather * * *	
771.42	Other	6% ad val.
	Of polyester	
	Of polyvinyl chloride	

Of polyethylene
Of polypropylene
Other:

In the alternative the plaintiff contends that the subject merchandise be classified under item 774.60, TSUS, providing:

Articles not specially provided for, of rubber of plastics:

* * * * * * *

774.60 Other ..... 8.5% ad val.

and in the further alternative under item 359.60, TSUS, providing:

Textile fabrics, including laminated fabrics, not specially provided for:

* * * * * * *

359.60 Other ..... 8.5 ad val.

It has been stipulated by the parties that "* * * the subject merchandise in its imported condition, consists of strips or sheets made or cut into rectangular pieces over 15 inches in width and over 18 inches in length." R. at 5. It is admitted by the pleadings that the merchandise in question is flexible and not of cellulosic plastics materials.

From the evidence submitted, which likewise appears to be undisputed, "Plantilla 80" and "Forrita 80" are manufactured principally for use as linings in footwear. The former is designed for use as a sock lining covering the inner sole of the shoe; the latter is designed for use as an inside lining of the upper shoe. The subject articles consist of nonwoven fibers and plastic coatings.

In the manufacture of the nonwoven fabric, dry, cut fibers are laid out in the form of a web on a conveyor belt, thereby permitting the fibers to be immersed in a bath of synthetic latex. In a subsequent drying process, the latex and the fibers are bound together into a thin substrate.[1] This fabric, processed as aforereferred to, is sold in rolls to the manufacturer of "Forrita 80" and "Plantilla 80" for use in the manufacture of the merchandise in question.

In the production of the subject merchandise a thin layer of liquid polyurethane paste is applied to a special siliconized paper. As the coated paper is heated and dried in an oven, the solvent contained in the paste evaporates, leaving a solid polyurethane remainder. A layer of liquid polyvinyl chloride (PVC) is spread upon the hardened polyurethane layer and again passed through an oven in order to effect a partial drying of the applied PVC. A layer of plastic adhesive is then spread upon the semirigid polyvinyl chloride, on which the nonwoven fabric is then placed. This layered arrangement, consisting of the paper, polyurethane, polyvinyl chloride, plastic adhesive, and the

[1] Illustration of the texture of the processed substrate is evidenced by plaintiff's exhibits 5A and 5B.

nonwoven fabric, is passed through an oven causing the polvyinyl chloride to be expanded and blown by the heating process. After cooling, the paper is released and to the surface of the plastic a lacquer is applied. When trimming and cutting are completed, the manufactured articles are in the form and constituency of the "Forrita 80" and "Plantilla 80", imported in rolls as the subject merchandise in the instant action.

The question presented for determination herein is illustrative of the imperspicuity encountered in the application of the provisions of schedule 3, TSUS, and the application of the provisions of schedule 7, TSUS, with respect to an article which may consist of materials in part provided for in each of said schedules. An examination of the Tariff Classification Study affords the opportunity to review the historical evolution of the present tariff schedules as they relate to the respective controverted classifications urged in the instant action. Clearly, there has been a failure to attain the clarity and specificity originally desired in their adoption.

Headnote 1(vii) to part 4, subpart C of schedule 3, TSUS, excludes from classification therein "other articles specially provided for in schedule 7 or elsewhere." Our inquiry in the present action, therefore, initially turns to a determination whether item 771.42, TSUS, as claimed by the plaintiff, serves to classify articles particularly characterized by the merchandise in question. An affirmative answer thereto precludes the classification of the merchandise under item 355.25, TSUS, as determined by the Customs Service or under the alternative classifications, items 359.50 or 359.60, TSUS, as urged respectively by the defendant and the plaintiff. *United States* v. *Canadian Vinyl Industries, Inc.*, 64 CCPA 97, C.A.D. 1189, 555 F. 2d 806 (1977).

The superior heading to 771.42, TSUS, requires that merchandise classified thereunder be "wholly or almost wholly of * * * plastics." As defined by general headnote 9(f)(iii), TSUS, " 'almost wholly of' means that the essential character of the article is imparted by the named material, notwithstanding the fact that significant quantities of some other material or materials may be present."

From the evidence adduced at the trial of the within action, the court can only conclude that the essential character of the subject merchandise is imparted by the plastic coatings, notwithstanding the presence therein of nonwoven fibers. It is undisputed that in serving as linings in footwear, only the plastic surfaces of "Forrita 80" and "Plantilla 80" are exposed. The nonwoven backing provides a substrate permitting the permanent attachment of the subject merchandise within the shoe. It is significant that all witnesses, in behalf of the plaintiff as well as the defendant, agree that the foremost characteristic which an imitation leather product, such as "Forrita 80" and

"Plantilla 80", must possess is an appearance simulating genuine leather. Without exception, it is acknowledged that such a characteristic is exhibited in the subject merchandise and imparted thereto solely by the plastic coatings.

The evidence further discloses that the subject merchandise possesses other qualities singularly characteristic of leather products. The plastic coatings applied to "Forrita 80" and "Plantilla 80" in the manufacturing process provide a soft feel, closely resembling the feel of leather. The smooth surface of the plastic coatings provides a resistance to abrasions, thereby protecting the inner shoe linings from wear as a result of the constant contact with the foot. From the testimony of plaintiff's witnesses it appears that because of the particular interest of customers, within the commercial shoe industry, in obtaining merchandise possessing the aforedescribed simulated qualities and characteristics of leather, little or no attention is given by these customers to the fabric substrate.

In its effort to demonstrate that the essential character of the subject merchandise is not imparted by the plastic coatings, the defendant offered evidence relating to certain qualities therein allegedly provided by the presence of the nonwoven fibers. Although it appears to be without dispute that the nonwoven fibers may contribute to additional characteristics possessed by "Forrita 80" and "Plantilla 80," such as tear-resistance, stretchability and burst-strength, the court does not find from the testimony that the presence of the nonwoven fibers or their contribution to such additional characteristics possessed by the subject merchandise serves to alter the essential character thereof. On the contrary, defendant's witnesses concede that the nonwoven fiber, alone and without the plastic latex binder applied thereto, possesses little strength and would, in fact, fall apart if it were to be picked up or handled. Only the combination of the plastic coatings, the nonwoven fibers and the plastic latex binder applied to such fibers provide the tear-resistance and stretch characteristics which the defendant seeks to attribute to the nonwoven fiber.

Viewing all of the evidence in its entirety, this court concludes that it is the visual and tactile qualities of the plastic coatings which impart to the subject merchandise its ability to serve as an imitation leather. Notwithstanding any qualities as to the durability and strength of the subject merchandise to which the nonwoven fibers may contribute, the essential character thereof is imparted by the plastic coatings and, accordingly, the merchandise is "almost wholly of * * * plastic" within the meaning of the superior heading to item 771.42, TSUS.

The defendant urges that the subject merchandise cannot be excluded from classification under part 4, subpart C of schedule 3, by virtue of headnote 1(vii) thereof, contending that the imported mer-

chandise is not an article within the meaning of the exclusionary provisions of the headnote. In support of this contention, the defendant refers to headnote 5 in schedule 3, in which it is stated that an article consisting either in whole or in part of fabric which is coated with plastic "shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that (as used in the article) the nontransparent rubber or plastics forms either the outer surface of such article or the only exposed surface of such fabric." Citing the legislative history contained in the House report to the Tariff Schedules Technical Amendments Act of 1965, the defendant contends that headnote 5 to schedule 3, accordingly, relates solely to finished articles of the character specified in the legislative history, i.e., rainwear, hunting jackets, footwear, headwear, gloves, luggage, handbags and furniture.[2] A fortiori, the defendant argues that intermediate products, consisting of nonwoven fiber and plastic coatings, used in the finished article, therefore, are precluded by the language of headnote 5 to schedule 3 from classification as articles not specially provided for under schedule 7.

In what appears to be a full answer to defendant's contention, our appellate court has held that rolls of nylon fabric coated with a glossy polyurethane skin are articles within the meaning of headnote 1(vii) to part 4, subpart C of schedule 3 and, accordingly, properly classified under item 771.40, TSUS, as strips or sheets in imitation of patent leather. *United States* v. *Canadian Vinyl Industries, Inc.*, *supra*.

The real thrust of defendant's argument in the instant action, however, is that the majority opinion in the *Canadian Vinyl* decision is in error and that the reasoning of our appellate court in that decision should not apply herein. This court cannot agree.

Pursuant to the Customs Simplification Act of 1954, the Tariff Commission was directed—

> "to make a comprehensive study of the laws prescribing the tariff status of imported *articles*" and to "(e)stablish schedules of tariff classifications which will be logical in arrangement and terminology and adapted to the changes which have occurred since 1930 in the character and importance of *articles* produced in and imported into the United States and in the markets in which they are sold." Tariff Classification Study Submitting Report (Nov. 15, 1960) at 1. [Italic supplied.]

It is clear from the foregoing that in the drafting of the Tariff Schedules of the United States, a broad meaning was intended to be given to the term articles. The definition of that term should not be narrowed unless the context, scope, or purpose of the applicable provisions should require otherwise. *D. N. & E. Walter & Co.* v. *United States*,

[2] H. Rep. No. 342, 89th Cong., 1st Sess., 10-11 (1965).

44 CCPA 144, 147–48, C.A.D. 652 (1957). The enumeration of specific types of finished articles referred to in the legislative history relating to headnote 5 to schedule 3, and upon which the defendant in part bases its restricted construction of the term "article," does not preclude the use of that term in a broader connotation under other applicable tariff schedules. In the within action we are not concerned whether the imported merchandise is an intermediate product of a finished article, as urged by the defendant, but rather whether the merchandise in question is an article specially provided for in schedule 7.[3]

Contrary to the restricted and narrow meaning of the term "articles" attributed by the defendant to the classification of the imported merchandise, it appears to have been specifically intended in the drafting of the Tariff Schedules of the United States to include under items 771.40 and 771.42, TSUS, thereof, plastic articles in imitation of leather in the very form and character as evidenced by the merchandise in question. The Tariff Classification Study, schedule 7, at 451, provides an insight with respect to the historical classification of such articles in the Tariff Act of 1930 as well as the intended purpose and purview of item 771.42, under present tariff schedules:

> "There have been significant imports of polyvinyl chloride film and sheets in imitation of *patent leather* and *fancy leather* which have been dutiable, by virtue of the similitude provision in paragraph 1559, at the rates applicable to such leathers in paragraph 1530. These rates are used for *such plastics materials* in items 771.40 and 771.42." [Italic supplied.]

This court, therefore, concludes that the merchandise in question as imported has been specially provided for in schedule 7 within the meaning and intent of headnote 1(vii) to part 4, subpart C of schedule 3. The more specific classification of the merchandise in issue provided for in item 771.42, TSUS, prevails over the basket provision at item 774.60, TSUS, alternatively claimed by the plaintiff. See *Travenol Laboratories, Inc.* v. *United States*, 67 CCPA ——, C.A.D. 1247 (1980).

Accordingly, the court finds that the Customs Service's classification of the merchandise in issue under item 355.25, TSUS, is in error and that the claimed classification by the plaintiff with respect to the subject merchandise under item 771.42, TSUS, is correct and proper and must be affirmed.

Let judgment be entered accordingly.

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[3] In a prior decision, *Marshall & Co.* v. *United States*, 67 Cust. Ct. 316, C.D. 4291, 334 F. Supp. 643 (1971)t this court's opinion predicated its decision in part upon the distinction between an intermediate produco and the final article. Though this distinction may be significant in some contexts, this court is unable tn agree with its application in the *Marshall* decision or in the case at bar. Congnizance was not taken thereir of headnote 1(vii), part 4, subpart C, schedule 3, TSUS—the determinative factor in reaching the prope, classification of the merchandise in question.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1251)

THE UNITED STATES *v.* SEAGULL MARINE, No. 79–40

1. DUTIABILITY OF LIFERAFTS

Judgement of the Customs Court sustaining claim that inflatable rubber liferafts are vessels within the meaning of 1 U.S.C. 3, general headnote 5(e), and subpart D headnote 1(ii) (TSUS) and as such are intangibles and not dutiable under the Tariff Act of 1930 is reversed.

2. DEFINITION OF "VESSEL"

The term "vessel," when used in subpart D and in general headnote 5(e) of the Tariff Act, is defined by 1 U.S.C. 3.

3. DECISION NOT BINDING

A prior decision of the Customs Court is not binding upon the Court of Customs and Patent Appeals.

4. DEFINITION OF "VESSEL"

The definition of "vessel" for tariff purposes has been narrowed to limit duty-free treatment to watercraft that are instrumentalities of commerce as opposed to articles of commerce.

5. INTERPRETATION—TSUS

Articles excluded by general headnote 5(e) are those excluded from subpart D headnote 1(ii); therefore, the phrase "vessels which are not yachts or pleasure boats" in headnotes 5(e) and 1(ii) must be given the same scope of interpretation.

6. LIFEBOATS—DUTY-FREE STATUS

Congress specifically directed in item 853.10 that lifeboats are to be afforded duty-free status when imported for use by institutions established to encourage the saving of human life which evidences no congressional intent to exempt all lifeboats, including liferafts, from duty.

7. CLASSIFICATION—LIFERAFTS

Subject liferafts are not vessels within the meaning of general headnote 5(e), do not meet the provisions of item 853.10, are specifically provided for in item 696.35 as pneumatic craft, as such, subject liferafts are dutiable as pneumatic craft in item 696.35.

U.S. Court of Customs and Patent Appeals, July 31, 1980

Appeal from U.S. Customs Court, C.D. 4814

[Reversed.]

Alice Daniel, Assistant Attorney General, *David M. Cohn*, Director, *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Section, *Susan C. Cassell*, Commercial Litigation Branch.

Edward N. Glad, attorney for appellee.

[Oral argument on May 5, 1980, by Susan C. Cassell for appellant, Edward N. Glad, for appellee.]

Before: MARKEY, *Chief Judge*, RICH, BALDWIN, and MILLER *Associate Judges*, and WINNER,* *Chief Judge*, U.S. District Court of Colorado.

BALDWIN, Judge.

[1] This is an appeal from the judgement of the U.S. Customs Court, 83 Cust. Ct. ——, C.D. 4814, 475 F. Supp. 158 (1979), sustaining appellee's claim that the goods in issue, inflatable rubber liferafts, are vessels and as such are intangibles and not dutiable under the Tariff Act of 1930. We reverse.

THE IMPORTED MERCHANDISE

The merchandise in this action consists of inflatable rubber liferafts exported from Wales and entered in California in early 1977. These liferafts have a carrying capacity of from 4 to 16 persons, are made of rubber covered fabric with sides consisting of two inflatable tubes with inflatable arches which support a double-wall canopy having an opening at one end, and are inflated by means of a carbon dioxide cylinder. The liferafts are imported in a deflated condition packed in low profile canisters or valises and come equipped with various survival gear, e.g., sea anchors, first aid kits, seasickness tablets, flashlights, etc. The parties concede that the merchandise in issue is, in all material respects, the same as that in *Thornley & Pitt* v. *United States*, 48 Cust. Ct. 134, C.D. 2325 (1962), which appellee avers is stare decisis of the issue here.

STATUTORY PROVISIONS

The merchandise was initially classified by the U.S. Customs Service under item 696.05 of the Tariff Schedules of the United States (TSUS) as a yacht or pleasure boat. In the court below, the Government conceded that such classification was erroneous and contended that the

*The Honorable Fred M. Winner, U.S. District Court for the District of Colorado, sitting by designation.

merchandise should be classifiable under item 696.35, as pneumatic craft, at the duty rate of 6 percent ad valorem. The court agreed with appellee that the liferafts are vessels and, consequently, are not dutiable.

The pertinent TSUS subpart is:

Subpart D.—Pleasure Boats; Floating Structures

Subpart D headnote:
1. This subpart does not cover—

* * * * * * *

	(ii) vessels which are not yachts or pleasure boats (see general headnote 5(e)). Yachts or pleasure boats, regardless of length or tonnage, whether motor, sail, or steam propelled, owned by a resident of the United States or brought into the United States for sale or charter to a resident thereof, whether or not such yachts or boats are brought into the United States under their own power; and parts thereof:	
	Yachts or pleasure boats:	
696.05	Valued not over $15,000 each	2% ad val.
696.10	Valued over $15,000 each	6% ad val.
696.15	Parts	7% ad val.
	Canoes, racing shells, pneumatic craft, and pleasure boats not specially provided for which are not of a type designed to be chiefly used with motors or sails; and parts of the foregoing:	
696.30	Canoes and canoe paddles, of wood or bark	5% ad val.
696.35	Pneumatic craft	6% ad val.
696.40	Other	12% ad val.

General headnote 5(e) mentioned in the subpart D headnote provides:

5. Intangibles—For the purposes of headnote 1—[1]

* * * * * * *

(e) vessels which are not yachts or pleasure boats within the purview of subpart D, part 6, or schedule 6 are not articles subject to the provisions of these schedules.

[2] The term "vessel," when used in subpart D and in general headnote 5(e) of the Tariff Act, is defined by 1 U.S.C. 3 as including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

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[1] General headnote 1 provides that all articles imported into the United States are subject to duty unless excepted under another general headnote.

CUSTOMS COURT

After receiving appellee's motion for summary judgment and the Government's cross-motion for summary judgment, the Customs Court held that *Thornley & Pitt* v. *United States*,[2] supra, was stare decisis of the issue and granted appellee's motion for summary judgment. The court rejected the Government's contention that the decision in *Thornley & Pitt* was clearly erroneous and in direct contradiction of precedent thus making the doctrine of stare decisis inapplicable.

The liferafts were seen to be specially provided for under the vessels provision of general headnote 5(e) and hence nondutiable. The Government's argument that *United States* v. *Bethlehem Steel Co.*, 53 CCPA 142, C.A.D. 891 (1966) modified the statutory definition of vessels by requiring that they be used in a commercial or maritime service was not considered persuasive. *Bethlehem Steel* was seen as going no further than saying that watercraft designed and intended for purposes other than transportation do not come within the meaning of the term "vessel." The vessel part or midsection involved in *Bethlehem Steel* was designed for use in construction rather than in maritime service. *Bethlehem Steel* was, therefore irrelevant to the questions in *Thornley & Pitt* and the case at hand.

Additionally, the court concluded that, contrary to the Government's contention, the provision in item 696.35 for pneumatic craft was not evidence that the legislature desired to change the status of liferafts, that item being only a redistribution in the TSUS of articles previously classified under paragraph 1537(b) of the Tariff Act of 1930 and was not a substantive change.

OPINION

The issue is whether the imported merchandise, i.e., inflatable liferafts, is a vessel within the meaning of 1 U.S.C. 3, general headnote 5(e), and subpart D headnote 1(ii), TSUS, and entitled to duty-free status or whether the merchandise is dutiable under item 696.35 as pneumatic craft.

As to the law announced in *Thornley & Pitt*, it is not stare decisis here. **[3]** A prior decision of the Customs Court is not binding upon this court. *Lafayette Radio Electronics Corp.* v. *United States*, 57 CCPA 62, C.A.D. 977, 421 F. 2d 751 (1970). Thus, we are free to come to an independent conclusion in this matter.

[4] As seen in 1 U.S.C. 3, supra, the definition of the term "vessel" is quite broad. However, judicial precedent has limited the definition of vessel for tariff purposes and has established that not every water-

[2] There the Customs Court held that inflatable liferafts, imported as cargo, were vessels within the definition of that term as codified in 1 U.S.C. 3 and exempt from duty under the Tariff Act of 1930.

craft meeting the bare terms of the definition is entitled to entry into the United States duty free. In particular, the scope of the term "vessel" has been narrowed to limit duty-free treatment to watercraft that are instrumentalities of commerce as opposed to articles of commerce. See *The Conquerer*, 166 U.S. 110 (1897); *United States* v. *Bethlehem Steel Co.*, supra; *Hitner Sons Co.* v. *United States*, 13 Ct. Cust. App. 216, T.D. 41175 (1922); and *Thayer* v. *United States*, 2 Ct. Cust. App. 526, T.D. 32252 (1912).

In comparing the subject merchandise with the criteria set forth in *The Conquerer* and its progeny, supra, we see that the appellee's liferafts cannot be considered vessels within the meaning of general headnote 5(e). The subject liferafts are undocumented, incapable of use as commercial transportation, and do not serve as vehicles for importation of other merchandise. The merchandise is carried as equipment on yachts, pleasure boats, and the like. Therefore, the liferafts are articles of commerce rather than instrumentalities of commerce and as such are not vessels under general headnote 5(e).

[5] Articles excluded by general headnote 5(e) are those excluded from subpart D headnote 1(ii); therefore, the term "vessels which are not yachts or pleasure boats" in headnotes 5(e) and 1(ii) must be given the same scope of interpretation. If, in construing general headnote 5(e), the term "vessels" is broadly interpreted to include the subject liferafts, then headnote 1(ii) must be so construed or the intended interrelationship between general headnote 5(e) and subpart D headnote 1(ii) would be destroyed. But if headnote 1(ii) is given the broad construction of headnote 5(e), i.e., to include the subject liferafts in the definition of vessels, then subpart D would be rendered internally inconsistent. "Canoes, racing shells (and) pneumatic craft" expressly provided for in subpart D separately from "yachts or pleasure boats," would be excluded from subpart D by headnote 1(ii) as "vessels which are not yachts or pleasure boats."

Applying *The Conquerer* and its progeny construction to general headnote 5(e) as discussed above avoids the intolerable result of subpart D headnote 1(ii) being internally inconsistent. *The Conquerer* construction excludes canoes, racing shells and pneumatic craft from the duty-free status of headnote 5(e) thus allowing those articles to be properly classified under items 696.30–696.40 where they are specially provided for.

[6] Additionally, it must be noted that Congress has specifically directed in item 853.10 that lifeboats and lifesaving equipment are to be afforded duty-free status when imported for use by institutions established to encourage the saving of human life. By such congressional action, it is evident that Congress did not intend to exempt all lifeboats, including liferafts, from duty.

[7] Since the subject liferafts are not vessels within the meaning of general headnote 5(e), since they do not meet the provisions of item 853.10, and since they are specifically provided for in item 696.35 as pneumatic craft, the Customs Court improperly held the subject liferafts to be nondutiable vessels. The subject liferafts are dutiable as pneumatic craft in item 696.35. Accordingly, we *reverse*.

Winner, C.J., *dissents*.

Appeal to U.S. Court of Customs and Patent Appeals

APPEAL 80–35.—Siemens America, Inc. *v.* United States.—SURGE VOLTAGE PROTECTORS—ELECTRICAL APPARATUS—ELECTRONIC TUBES—TSUS. Cross-appeal from C.D. 4856. Appeal 80–33, reported in Customs Bulletin of August 13, 1980 (vol. 14, No. 33), was filed by the Government.

In this case certain gas tube surge voltage protectors were assessed with duty at the rate of 14, 12, 10, or 8.5 percent ad valorem, depending upon the year of entry, under the provision in item 685.90, Tariff Schedules of the United States, as modified by T.D. 68–9, for other electrical apparatus for the protection of electrical circuits. Plaintiff-appellee claimed that the merchandise was properly dutiable at the rate of 9.5, 8, 7, or 6 percent, depending upon the year of entry, under the provision in item 709.66, as modified, for apparatus based on the use of radiations from radioactive substances. Alternatively, plaintiff claimed that the merchandise was dutiable at the rate of 10, 8.5, 7, or 6 percent, depending upon the year of entry, under the provision in item 687.60, as modified, for other electronic tubes. The Customs Court sustained plaintiff's alternative claim under item 687.60 and dismissed plaintiff's primary claim under item 709.66.

Except as to surge voltage protectors not containing radioactive material, it is claimed that the Customs Court erred as follows: In finding and holding that the merchandise is not based on the use of radiation from radioactive substances; in finding and holding that the merchandise is not classifiable under item 709.66, supra, in contravention of schedule 6, part headnote 1(vi), notwithstanding the correct determination that the merchandise is otherwise properly classifiable under item 687.60, supra.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CERTAIN SLIDE FASTENER STRINGERS AND MACHINES AND COMPONENTS THEREOF FOR PRODUCING SUCH SLIDE FASTENER STRINGERS	Investigation No. 337–TA–85

Notice of Denial of Motion to Strike Certain Portions of the Complaint of Talon Division of Textron, Inc.

Upon consideration of Motion Docket No. 85–2, as certified to the Commission by the Administrative Law Judge (ALJ) on June 25, 1980, and the ALJ's recommendation that the motion be denied, the Commission has ordered that said motion is denied.

Copies of the Commission action and Commission order are available to the public during official working hours at the Office of the Secretary, U.S. International Trade Commission, 701 E. Street NW., Washington, D.C., telephone 202–523–0161.

By order of the Commission.

Issued: July 29, 1980.

KENNETH R. MASON,
Secretary.

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Customs Court

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